

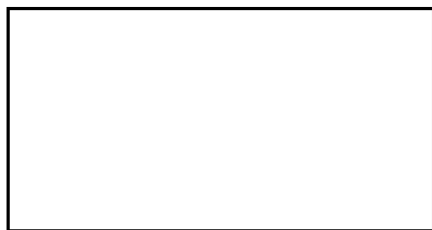
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[redacted] has asked us to represent them in negotiations with you for the settlement of its claims arising from the termination of [redacted] dated June 26, 1963.

As you may be aware, I have already had informal discussions with Agency representatives, and I am taking the liberty of quoting here from my communication to [redacted] in which I outlined what I understood the Agency's position to be as a result of those discussions. I hope that if you feel I have misconstrued any aspect of the Agency's position you will let me know so that we may continue our candid approach to settling this matter amicably, efficiently, and fairly.

"The Agency seems to feel that you and the auditors reached a satisfactory understanding and agreement with respect to all items in the contract termination negotiations with the exception of the unexpired lease, capital improvements, and the three men placed under contract [redacted]. The Agency representatives say that these items should have been included in your original proposal when the contract was let out for bids, in which case they could have been attributed as direct costs of the contract and you would have been reimbursed for them at the time of termination. They further state that none of these items could reasonably be said to have been in anticipation of [redacted] being awarded the contract. As I understand it, there were five bidders considered, in which case [redacted] could not have been sure of the contract until it was actually awarded.

"As to specific items, they state the new space was acquired in February 1962 before the [redacted] was even being discussed. They say that from the size of the expansion

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it was clear that you were expecting more work than that for [redacted] alone, and that also for that reason the expansion cannot be attributed to that one contract.

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"With respect to the three men placed under contract, they state that they never worked on the contract and that a [redacted] increase in payroll could not be justified by a contract.

"In brief, the Agency's position is that when a firm makes a proposal on a contract they must assume that the firm is prepared to fulfill the terms of the contract and that routine expansion to handle an increase of business is an incident of normal commercial activity and the government cannot be expected to indemnify the contractor for the cost of such expansion should a contract be terminated; rather, the sounder approach is that the termination of any contract leaves some gap in the contractor's activity and that if this is unduly great or is within facilities uniquely demanded by the particular contract, such direct expenses should be set forth in the cost proposal and reflected in an increase in the bid price. Incidentally, they advised me that had you done this, you probably would have gotten the contract anyhow, even had your bid not been the lowest."

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It will be useful at this point to set forth some of the background of [redacted] dealings with the Agency over the years. [redacted] or its predecessor, [redacted] has performed highly satisfactory services for the Agency and O.S.S. since 1947. During this period it has had some twenty-five or thirty contracts, none of which was ever terminated. There is a long history, virtually the entire period just mentioned, of dealings between the Agency and [redacted] by verbal request, with paper work following when time allowed. Within this frame-work it was not unusual at all for [redacted] to begin a project with no contract or purchase order, relying solely on the personal assurances of Agency officials; and in fact, this arrangement never proved unsatisfactory to either party since the contracts, when approved, were always in fair implementation of the informal understanding of those concerned.

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There was even a time during the fulfillment of three or four contracts when a telephone call from the company to [redacted] advising that an invoice was on the way was all that was necessary to produce a remittance from the Agency, dispatched actually before the invoice was in the Agency's hands.

Another example of these informal dealings was the servicing of the knife assembly of certain equipment which had been

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supplied by [] facility. These assemblies were delivered to [] "anonymously," serviced, and later called for, again "anonymously." A bill for the service was prepared on each of these occasions and directed to the Agency and was promptly paid. This course of dealing went on for a protracted period of time with no contract or other paper evidencing the company's right to be paid for the service it was performing.

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Yet another example, and much more recent, involved the fulfillment of an Agency contract for the production of a 70 mm to 9 inch four-power continuous enlarger for NPIC. In the summer of 1960, some four weeks before the projected completion date, [] was contacted by a senior Agency representative, who advised that the device had to be completed by the end of the following week because of an emergent need on the part of the Agency. When advised that there were a full four weeks remaining for the scheduled completion of the project, the Agency representative advised [] to "work around the clock" but at all costs finish the project by the new deadline, at which time a C-54 would be dispatched to [] to pick up the completed device. As it happened, the project was completed as requested by the following Saturday, and the C-54 did arrive to take it to its destination. At no time was there any change order, memorandum, letter, or other writing authorizing the additional costs involved in meeting the emergency deadline. [] relying on fifteen years experience with verbal requests from the Agency and accustomed to consistent honoring by the Agency of such informal arrangements, went ahead, its attention focused on getting the job done and not on the ultimate problems of audit.

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With the above general tenor of the relations between [] and the Agency in mind, we come to the specific history of [] The concept which eventually became the basis of this contract was discussed in gradual degrees of development by [] with the military beginning early in 1962. The proposal for design and construction of the device was originally made to the Air Force at Westover Field, informally, in March 1962, and formally in June 1962. Shortly thereafter, Air Force representatives indicated that they would not participate in the development of the device but they understood that the Agency would, and they suggested that [] turn its attention to the development of the idea with the Agency.

Exploratory conversations were begun with the Agency and these resulted in the proposal being submitted to the Agency on November 9, 1962. This proposal was on the same technical basis as that submitted to the Air Force the previous June and as that

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of the ultimate [redacted]. Likewise, the other aspects of the two proposals, including the description of the company's capabilities, were substantially the same in the two proposals.

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In the following months further discussions were held with representatives of the Agency together with the [redacted] and the military research and development agency. By February 1963 it was clear to [redacted] that the contract would be entered into. The only question unresolved at that time was whether or not the [redacted] would participate. I understand that [redacted] "bid," or cost proposal, on the contract had turned out to be lower than the next nearest by over [redacted]

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At a meeting at the Naval Gun Factory on February 26, 1963, Agency representatives present were in agreement to go ahead with the project with or without the [redacted] which was represented by [redacted] who was still not sure of their position. Present at that meeting, among others, were Messrs. [redacted]. The meeting was conducted by [redacted] in the absence of [redacted] of NPIC, the senior Agency technical representative for the project who would later be charged with the monitoring of the contract. At this meeting [redacted] were informed that the Agency had decided to give [redacted] the contract and that there remained only the working out of the final detailed specifications consistent with the technical requirements of [redacted] and the formal issuance of the contract. On April 1, [redacted] received a letter from [redacted] signed by [redacted] in which the final specification changes of the prototype for [redacted] were spelled out in relation to the original specifications as outlined in the proposal of November 9, 1962. Subsequently, [redacted] spent considerable time with [redacted], contracting officer of the Agency, ironing out the final contract, which was received by [redacted] at the end of June 1963.

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I might observe at this point that [redacted] throughout its years of dealings with the Agency, and indeed with O.S.S. before it, has never manifested any particular sophistication as to government requirements for documentary substantiation or the more technical aspects of contracting with the government generally, nor has it ever before been required to. We would concede that the proposal on [redacted] may have technically fallen short of requirements, measured against government contracting rules. I sincerely believe, however, that neither [redacted] nor the Agency expected termination of this contract and that no consideration was given by either to the consequences of termination. Although the Agency has taken the view that certain items claimed

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by [] in connection with the termination would have been more appropriately set forth in the proposal, and ultimately the contract, as direct costs, these might still be fairly included in the termination costs in light of the course of dealings of the parties and applicable law and regulations.

The failure of the proposal to spell out direct cost items and the tendency to act in expectation of the contract before its formalization should be measured against the previously described history of informal dealings.

We turn then to the specific items of disagreement.

Unexpired Lease

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The original lease on the premises occupied by [] was for the top floor of [] and covered a term of five years, commencing May 1, 1961. Subsequently, a new lease was negotiated for a portion of the floor below (4200 sq. ft.), for a term beginning February 1, 1962, and terminating concurrently with the lease for the top floor. At the same time, there was an informal understanding with the landlord that [] had an option on the remaining portion of the floor below (7800 sq. ft.). This option was taken up in May 1963, to terminate on the date set forth in the original lease for the top floor, that is, the end of May 1966. The May 1, 1963, lease, for the remainder of the third floor, provided for an annual rental of []

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If, as we believe, the contract was assured to [] as early as March of 1963, there seems to be nothing in the timing of the leases which is inconsistent with [] contention that the additional space on the third floor was obtained in reasonable anticipation of [] and was necessary for the performance of it. The contract was, in fact, formally entered into but a month later.

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It is perhaps worthy of note that the November 9 proposal, ultimately incorporated in [] made reference to the one and one-half floors occupied by [] at that time, and to the additional one-half floor being readied to accommodate personnel and facilities, including security arrangements which were for the contract being proposed. The 7800 sq. ft. acquired by [] in May of 1963 was, without the requirements of [] far in excess of its needs and, in fact, to this day remains largely unused.

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The annual gross of [] for the fiscal year prior to that in which [] was awarded was []

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One can hardly gainsay the extraordinary impact of [] upon a business this small, the contract price being approximately [] a 30% increase over the previous year's business. It would seem inescapable that such a company would require additional facilities and personnel. [] required nearly "white room" conditions. That additional space was needed and that it be different space was understood by the Agency's technical representatives, if not by its contracting representatives, because of the requirement of a nearly dust-free environment meeting standards higher than those in a normal plant manufacturing photographic equipment. It cannot be overemphasized that this project was based upon the production of highly sophisticated instrumentation working with the finest grain films, exposed at such a distance as ultimately to involve enlargement processes wherein dust particles could obliterate entire city blocks.

Contract Labor

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The next item in dispute is the hiring by [] of three engineers for work on []. After the contract was entered into, [] in September 1963, engaged the services of three additional engineers. Agency representatives were aware that these men were being hired to work on []. Indeed, it was Agency representatives who suggested to [] that they be hired for staggered entry on duty - September 15, October 15, and November 15 - to match up with the gradually accelerating developmental phase of the contract. Thus, under the one year contract terms for each man, the last of the three would be terminated on November 15, 1964, about two months before the completion of the contract which, by that time, would have been in the final stages of fabrication and beyond the stage requiring engineering talent and labor above that of the firm's normal operating level. These men were hired specifically for [] which could not be performed without them. At no time during the life of the contract were any of these individuals given work on any other project. Furthermore, even after the termination of [] until the terminations of the three employment contracts respectively, a great portion of the time of these employees was idle, there being little other work for them to do. It is worthy of note that it was implicit in the proposal that at least two new men would have to be hired; it referred to space being readied for six when four were on the payroll. The new men were totally nonproductive for at least ninety days each.

The payroll increase occasioned by the hiring of these three men was fully justified by [], the R and D phase of which alone was in the neighborhood of [] which, in view of the firm's existing structure, would appear to have amply covered the three men, with a profit.

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Leasehold Improvements

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Late in 1962, as hopes rose for the implementation of the project, [REDACTED] began the renovation of the second portion of the third floor. This was done initially by "moon-lighters" who would come in at night and do the work. That this work had commenced was acknowledged in the contract proposal of November 9, 1962. As the contract became more assured, the work was accelerated. The last phase of the improvements, costing nearly [REDACTED], was performed after the contract had been signed. Incidentally, the door to the payment of the cost of leasehold improvements was left open by the final sentence in the report on the final audit submitted by the Chief, Industrial Contract Audit Division, to the Chief, Procurement Division/OL, dated 6 March 1964.

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It has been suggested that the questioned expenditures in all three areas might be attributable in part to [REDACTED] but that they also would be then attributable in part to the companion military contract which [REDACTED] expected but never received. We point out that for the initial twelve months of the contract, all of the effort was to be on research and development. The only difference made by the loss of the military contract was that at the prototype production stage there would be only one device fabricated instead of two. The additional space, the improvements to the leasehold, and the hiring of additional talent were almost exclusively directed toward the R and D phase, and these items were just as necessary for the production of one device as for two, and were therefore fully as necessary for [REDACTED] alone as for [REDACTED] and a like contract from another agency.

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In the light of the above and after a thorough review of the files, including [REDACTED] accountings in the various areas in question, I would propose, in the interest of compromise, a settlement of the outstanding accounts arising from the termination of [REDACTED] by the payment of the following to [REDACTED]

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1. The unamortized value of the leasehold acquired by [REDACTED] in May 1963, but not that acquired in February 1962. Such payments are authorized by ASPR, [REDACTED]. This would be computed at [REDACTED] per month times the fourteen and one-half months unexpired period of the contract: [REDACTED]

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2. The actual cost of improvements made to the leasehold for the specific purpose of readying the plant for the execution of [REDACTED] but limited to those items incurred from the time of the contract proposal in November 1962: [REDACTED]

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[REDACTED]

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3. One-fourth of the one-year contract costs of the three professional employees hired exclusively for [REDACTED] We have adopted ninety days as being a reasonable time to have allowed [REDACTED] to prudently minimize its claim against the Agency either by negotiating the termination of the employment contracts or by finding work for the men which could be allocated to other contracts. The three men were employed at annual rates of [REDACTED] [REDACTED] respectively, which would result, on the basis just stated, in a loss claimed of: [REDACTED]

TOTAL - Items 1, 2, and 3-----

[REDACTED]

4. Concomitant adjustment of overhead, fixed fee, and like computations.

5. Straight termination costs, including preparation of the final accounting and termination reports, audit and legal expenses, etc. These will be submitted separately and would, of course, be subject to audit by the Agency.

I trust you will agree that the above represents a fair basis for resolving this matter and that I may be hearing from you in the near future with respect to those steps remaining to be taken for the working out of final details.

Sincerely,

[REDACTED]

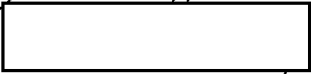
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Here is a copy of a
letter of May 4, 1965 from
 representing
contractor on this term-
inated. He is going
to have to be more
specific if he expects
us to accept much
of these costs. But
assuming he does
submit more specific
information on the
relation of these costs

Approved For Release 2002/06/17 : CIA-RDP78B04747A001500010002-3
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High Resolution
Printer —

Technical advice
needed in Termination
negotiations — prob.
1st part of July.

● build up of force
Clean robust technical
personnel and capital

Standard Form 63
November 1961
GSA Gen. Reg. No. 27

MEMORANDUM OF CALL

Date 11 Jan Time 1030

TO: [Redacted]

FROM: [Redacted]

TELEPHONE: [Redacted]

- ☒ PLEASE CALL ☐ WAITING TO SEE YOU
☐ WILL CALL AGAIN ☐ WISHES AN APPOINTMENT
☐ RETURNING YOUR CALL
☐ IS REFERRED TO YOU BY:

LEFT THIS MESSAGE: E/12 [Redacted]

Please file in
High Resolution
Printer's File
Contract
Cancelled
 Received By: [Signature]

63-106

U.S. GOVERNMENT PRINTING OFFICE : 1963 OF-689929

MEMORANDUM FOR:

Be prepared

[Redacted]

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REPLACES FORM 10-101
WHICH MAY BE USED.

(47)